IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 6TH FEBRUARY 2007 / 17TH MAGHA 1928

WP(C).No. 4114 of 2007(M)

PETITIONER:

FEDERAL BANK LTD.,
ULIKKAL BRANCH, KANNUR DISTRICT,REPRESENTED BY ITS
MANAGER, JOSE MARYDAS.

BY ADV. SRI.GEORGE VARGHESE

RESPONDENTS:

---

1. THE DISTRICT COLLECTOR, KANNUR DISTRICT.

2. THE TAHSILDAR (R.R),
JUBILEE SHOPPING COMPLEX, THALASSERY.

3. BINU THOMAS,
PROPRIETOR, M/S. VATTAKATTU TRADING CO.,
MADATHIL HOUSE, AMBAYATHODE P.O., THALASSERY.

R1 & R2 BY GOVT.PLEADER SRI.GOVINDAN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06/02/2007,

THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN, J.

= =

WP(C).No. 4114 OF 2007-M

= =

Dated this the 6th day of February, 2007.

JUDGMENT

The petitioner is a scheduled bank. It is a mortgagee of certain properties belonging to the third respondent, who had availed the loan from it. The State Government moved revenue recovery proceedings for recovery of dues under the Kerala General Sales Tax Act. Going by the provisions of that statute, the Government has a first charge on the property. There could be no dispute on this. If that be so, the revenue recovery proceedings are justified.

2. The learned counsel for the bank submitted that the interest of the bank is to ensure that its dues are also recovered and therefore, had addressed the second respondent to give the bank also a notice of the revenue recovery proceedings so that it can take necessary action to attract

proper buyers to ensure that all amounts due are brought in. Being a scheduled bank, the petitioner cannot have the aid of Revenue Recovery Act, at least, as at present, since there is no notification issued by the competent authority letting it take recourse to the Revenue Recovery Act. Under such circumstances, there may not be of a legal foundation for the petitioner to seek such relief. But, obviously, the petitioner, as a mortgagee, is entitled to protect the hypotheca/the mortgaged property and is, therefore, entitled to pay off the outstandings due to the State Government and treat it as a payment made under distress to save the mortgaged property. It is, thus, entitled to claim additional charge on the property provided it pays off the money due to the Government under the impugned distress action, to protect the right of the mortgagee under the Transfer of Property Act. Without prejudice to the writ petitioner taking such a course of action, this writ petition is disposed of directing that the impugned revenue recovery sale, if held, shall not be confirmed within a period of two months from now. This is only to enable the petitioner to find out ways and means of reaching at its goals

in relation to the mortgaged property.

Sd/-

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-

-true copy-

P.S.to Judge.